

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., et al., Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING THE SECOND¹ APPLICATION OF
CANADIAN ZAI CLAIMANTS PURSUANT TO 11 U.S.C. §§ 503(b)(3)(D) AND (b)(4)
FOR ALLOWANCE OF ADMINISTRATIVE EXPENSES OF
LAUZON BÉLANGER S.E.N.C.R.L. AND SCARFONE HAWKINS LLP
INCURRED IN MAKING SUBSTANTIAL CONTRIBUTION
FOR THE PERIOD OF SEPTEMBER 1, 2008 THROUGH DECEMBER 20, 2009**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Second Application of Canadian ZAI Claimants Pursuant to 11 U.S.C. §§ 503(b)(3)(D) and (b)(4) for Allowance of Administrative Expenses of Lauzon Bélanger S.E.N.C.R.L. and Scarfone Hawkins LLP Incurred in Making Substantial Contribution for the Period of September 1, 2008 through December 20, 2009 (the "Application").

BACKGROUND

1. Lauzon Bélanger S.E.N.C.R.L. ("Lauzon Bélanger") and Scarfone Hawkins LLP ("Scarfone Hawkins") (both, "Representative Counsel") are Canadian law firms which were retained

¹This is the second Section 503(b) motion that Representative Counsel have filed in this case. The first Section 503(b) motion was filed by Representative Counsel on November 10, 2008 (Docket #19974) and sought fees of \$321,109.00 and expenses of \$11,566.90 for sums paid to local Delaware counsel, The Hogan Firm, for the period of June 22, 2006 through August 31, 2008. The Court approved the application by order dated December 15, 2008 (Docket #19980).

by the Ontario Superior Court of Justice to act as Representative Counsel to Canadian Zonolite Attic Insulation Claimants (“Canadian ZAI Claimants”) in a number of Canadian class action lawsuits involving the Debtors, and other entities, including the Attorney General of Canada. In the Application, the Representative Counsel seek approval of fees totaling \$394,007.04² and expenses totaling \$55,377.79 for their services from September 1, 2008 through December 20, 2009 (the “Application Period”). Of this amount, \$86,127.65 in fees and \$36,589.87³ in expenses are sought by Lauzon Bélanger, and \$307,879.39 in fees and \$18,787.92⁴ in expenses are sought by Scarfone Hawkins.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2010, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the “U.S. Trustee Guidelines”), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Representative Counsel based on our review, and we received a response

²Consistent with the Application, all dollar amounts in this report are in Canadian currency.

³This amount also includes Canadian Goods and Services Tax (“GST”) of \$5,404.15 and Quebec Sales Tax of \$8,511.54.

⁴This amount also includes GST of \$15,531.40.

from Representative Counsel, portions of which response are quoted herein.

DISCUSSION

General Issues

3. We offer no opinion in this report as to whether Representative Counsel should be compensated under Section 503(b). Rather, our recommendations pertain only to the reasonableness of the fees and expenses requested and are contingent on the Court's determination that Representative Counsel have satisfied the requirements of Section 503(b).

4. We note for informational purposes that, pursuant to the terms of the Amended and Restated CDN ZAI Minutes of Settlement between Debtors and Representative Counsel, dated November 16, 2009, and approved by the Ontario Superior Court of Justice,⁵ Representative Counsel are to be paid the sum of \$2,000,000.00 from the Canadian ZAI Property Damage Claims Fund, which fund shall be funded on the Effective Date of Debtors' plan of reorganization. In the meantime, Representative Counsel have filed with this Court a separate application under Section 503(b) seeking approval of their \$2,000,000.00 compensation payment. The \$2,000,000.00 sought in Representative Counsel's other substantial contribution motion is completely separate from the compensation sought in this Application and pertains to services rendered by Representative Counsel from October 1, 2004 through August 31, 2008.

5. In our initial report, we noted that Lauzon Bélanger billed GST of \$5,404.15 and Quebec Sales Tax of \$8,511.54. We also noted that Scarfone Hawkins billed GST of \$15,531.40. Thus, we asked for a brief explanation of the Canadian legal authority for charging sales tax on the fees and expenses billed in the Application. Lauzon Bélanger responded as follows:

⁵Court File No. 01-CL-4081.

Lauzon Bélanger billed GST of \$5,404.15 and Quebec Sales Tax of \$8,511.54 pursuant to Canada Revenue Agency (“CRA”) RC4022 and Revenu Québec IN-203-V.

In addition, Lauzon Bélanger provided a copy of these publications, which we reviewed. It appears from these materials that Lauzon Bélanger and Scarfone Hawkins are required to collect GST on the legal services they provided, and Lauzon Bélanger, a Montreal firm, is required to collect Quebec Sales Tax on the services it provided.⁶ Thus, we have no objection to these expenses.

Lauzon Bélanger

6. In our initial report, we noted that the time entries did not appear to be billed in tenths of an hour increments (six minutes) as required by the Local Rules.⁷ We noted no time entries of less than 10 minutes in the Application, even though the Application covered a 15-month period. Thus, we asked Lauzon Bélanger if it has a policy of billing a minimum of 10 minutes per time entry. Lauzon Bélanger responded: “Lauzon Bélanger does not have a policy of billing a minimum of 10 minutes per time entry” and “(o)ur minimum billing is of 5 minutes (0.08).” We appreciate Lauzon Bélanger’s response, but in our experience there are almost always some time entries for six minutes (0.10), and the absence of any time entries of less than 10 minutes (0.17) indicates that time is being kept in increments of 10 minutes, rather than the six minutes required by the Local Rules. All of the time entries of 0.17 minutes were billed by attorney CH, billing at an hourly rate of

⁶There are exceptions to these taxes for certain types of services provided to persons or companies who are non-residents of Canada. However, for the period in question, Lauzon Bélanger and Scarfone Hawkins were providing legal services to the Canadian ZAI claimants (even though they contend those services provided a substantial contribution to the W.R. Grace bankruptcy estate). We have insufficient information to determine whether any party is or will be entitled to a refund or credit of such taxes, if paid.

⁷According to Del.L.R. 2016-2(d)(iv): “Activities shall be billed in tenths of an hour (six (6) minutes);

\$285.00. As we think that Lauzon Bélanger has not carried its burden of showing that this time was accurately kept, we think it appropriate to reduce 50% of these time entries to 0.10, and, accordingly, we recommend a reduction of \$598.50⁸ in fees.

7. We noted an expense item of \$72.00 described only as “Various expenses.” In response to our inquiry, Lauzon Bélanger provided the following information:

Uniglobe - Sept. 22, 2008 & September 29, 2008 - Service Fees CDN\$37.00 and CDN\$35.00 (See invoices attached hereto . . .)

We reviewed the invoice provided by Lauzon Bélanger, and note that the expenses were for air fare booking fees billed by a travel agency. Thus, we have no objection to these expenses.

8. We noted \$491.22 in unspecified travel expenses, and asked Lauzon Bélanger to provide an itemization. Lauzon Bélanger provided copies of the invoices for these charges, as well as the following information:

Travel Expenses in the amount of \$491.22 are itemized as follows:

- a. Air Porter - Sept. 30, 2008 to Toronto - CDN\$431.51 (less taxes and fees) (See Fare Summary attached hereto . . .)
- b. Air Porter - Sept. 30, 2008 - flight change - CDN\$112.88 (See Porter receipt attached hereto . . .)

We note from the invoices that the charges were for a round trip airline ticket from Montreal to Toronto, with an added charge because of a change of flight. Although Porter Airline, the airline utilized by Lauzon Bélanger, offers upscale services, we found that in this particular instance, the charges were less than comparable economy class fares charged by other commercial airlines. Thus, we accept Lauzon Bélanger’s response and have no objection to these expenses.

⁸There were 60 time entries of 0.17. We calculated our reduction by reducing 30 of the 0.17 time entries to 0.10, or by \$19.95. $30 \times \$19.95 = \598.50 .

9. We noted the following expense for which more information was needed:

Member services (830.5 hours)	\$20,056.58
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In response to our inquiry, Lauzon Bélanger provided the following information:

The “Member Services” expense is comprised of hours spent by five employees of Lauzon Bélanger called “Member Services Personnel”. These employees are treated as a separate entity and are responsible for answering ZAI class member’s questions, creating and maintaining a database of ZAI class members, and providing information to ZAI class members on the class action. (830.5 hours @ \$20,056.58), please see detailed report attached hereto

We have attached the report provided by Lauzon Bélanger as Response Exhibit “1.” We note that the report provides lists of hours worked by the Member Services Personnel over the 15-month period in question, and the work description indicates work of a clerical nature which was billed at \$24.15 per hour. The tasks described appear to be necessary, and an hourly rate of \$24.15 appears to be reasonable for the tasks described. Thus, we accept Lauzon Bélanger’s response and have no objection to this expense.

Scarfone Hawkins

10. We have no issues with or objections to Scarfone Hawkins’ fees and expenses.


CONCLUSION

11. Thus, we recommend approval of \$393,408.54 in fees (\$394,007.04 minus \$598.50) and \$55,377.79 in expenses for Representative Counsel’s services for the Application Period, of which \$85,529.15 in fees (\$86,127.65 minus \$598.50) and \$36,589.87 in expenses are for the services of Lauzon Bélanger, and \$307,879.39 in fees and \$18,787.92 in expenses are for the services of Scarfone Hawkins.⁹

⁹As stated in Paragraph 3, *supra*, these recommendations are contingent upon the Court’s determination that Representative Counsel has made a substantial contribution pursuant to 11

Respectfully submitted,

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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 28th day of May, 2010.


Warren H. Smith

U.S.C. § 503(b).

SERVICE LIST

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